In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.13999 of 2004

**.....**

Date of decision:21.7.2006

Chaman Lal alias C.L. Gupta

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Deepak Agnihotri, Advocate for the petitioner.

Ms. Neelofer A. Perveen, Assistant Advocate General, Punjab for respondents No.1 and 2.

Mr. Sanjay Gupta, Advocate for respondents No.3 to 5.

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**S.S. Saron, J.**

The claim of the petitioner for counting his past service rendered with the Swami Swatantranand Memorial College, Dina Nagar (respondent No.5) (`respondent No.5 College' – for short) for the period from 5.8.1974 to 18.12.1981 for the purpose of selection grade and other consequential benefits having been declined vide impugned order dated 17.6.2004 (Annexure-P.22), he has approached this Court for quashing the same and for counting the said service for the purpose of selection grade.

The petitioner was appointed as Sanskrit Lecturer on 5.8.1974 with respondent No.5 College. During his service vide an order dated

16.10.1981 (Annexure-P.2) he was transferred to R.K. Arya College, Nawanshahr (respondent No.4) (`respondent No.4 College' -for short). The order of transfer was received by the petitioner vide letter dated 22.10.1981 (Annexure-P.3). The petitioner claims the benefit of service rendered by him with the respondent No.5 College towards selection grade and other consequential benefits.

We have heard learned counsel for the parties. Learned counsel for the petitioner contends that the action of the respondents in not counting the previous service rendered by the petitioner with respondent No.5 College is illegal, arbitrary and discriminatory inasmuch as the service rendered by Dr. R.C. Sharma, who was transferred from Nawanshahr to Ludhiana in terms of the same transfer order dated 16.10.1981 (Annexure-P.2), has been counted for the purpose of service benefits specially selection grade.

In response, learned counsel appearing for the respective respondents have submitted that the petitioner is not entitled to count the previous service rendered by him with respondent No.5 College for the purpose of grant of senior/selection grade. Strong reliance has been placed on the order dated 14.8.1998 (Annexure-R.1) passed by the Supreme Court in Director of Public Instructions, Punjab v. Mahesh Chander and others, Civil Appeal Nos.4053-4054 of 1998.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties. The case set up by the petitioner is that joining of the petitioner after the order of his transfer was unnecessarily delayed and that he never left respondent No.5 College on his own. A perusal of the order dated 16.10.1981(Annexure-P.2) regarding transfer of

the petitioner and Shri Ram Chander Sharma, Lecturer in Sanskrit in respondent No.4 College would show that Shri Ram Chander Sharma was transferred in place of Shri Chakravarti, Lecturer in Sanskrit, on his request and in his own pay scale to Arya College, Ludhiana. Besides, the petitioner was transferred from respondent No.5 College in place of Shri Ram Chander Sharma in respondent No.4 College on his request in his present grade and scale. It was also mentioned that the fresh appointment would be made by respondent No.5-College in place of the petitioner. By a letter dated 22.10.1981 (Annexure-P.3), the transfer order in respect of the petitioner dated 16.10.1981 was sent and it was mentioned therein that the petitioner has been transferred to respondent No.4 College. Besides, the post was being advertised and the petitioner would be relieved in the first or second week in November 1981. The post against which the petitioner was working in respondent No.5 college had to be filled by advertisement and for this the College authorities needed time before the petitioner could actually be relieved to join at his next place of posting. In the circumstances, it cannot be said that the transfer of the petitioner had been unnecessarily delayed as the petitioner had been transferred on his own request and the post where he had been working had to be re-advertised.

Even otherwise the petitioner would not be entitled to count his past service for the grant of senior/selection grade rendered by him in respondent No.5-College. The said benefit has been denied to the petitioner in terms of order dated 17.6.2004 (Annexure-P.22). It is stated that the benefit of past service of other College cannot be given for the grant of senior/selection grade as per instructions issued by the Punjab Government

vide letter dated 16.11.1989. The petitioner has failed to show any legally enforceable statutory right that would entitle him to the grant of the service rendered by him in respondent No.5-College for the purpose of grant of senior/selection grade. He has not referred to any rule, regulations or instructions which would entitle him to the said relief. Besides, the Supreme Court in Mahesh Chander's case (supra) considered the case where the Lecturers therein who had been working in different private colleges had joined as Lecturers in other colleges after submitting resignations. The said Lecturers claimed the benefit of their past service for the purpose of grant of senior scale/selection grade under the Career Advancement Scheme for Lecturers as framed by the University Grants Commission. In terms of the scheme previous service without any break as a Lecturer or equivalent in the University College/National Laboratory or other scientific organizations is to be counted for placing of Lecturers in senior scale/selection grade provided the conditions set out in the D.O. letter dated 27.11.1990 were satisfied. It was pointed out by the Director, Public Instructions, Punjab, the appellant before the Supreme Court that the State Government had not accepted the Scheme in respect of private aided colleges or even State Colleges. It was observed by the Supreme Court that the conditions as contained in the D.O. letter dated 27.11.1990 of the University Grants Commission are to be considered by the State Government for its implementation as the clarification issued by the University Grants Commission involves a financial burden on the State exchequer. The concurrence of the State, for its implementation, it was held, has to be sought. Since the said concurrence had not been given, it was observed that it was not right to grant the

Lecturers therein the benefit of the University Grants Commission letter dated 27.11.1990.

The fact that the said benefit of selection grade has been given to Shri Ram Chander Sharma, who was transferred from Nawanshahr to Ludhiana in terms of the same transfer order as the petitioner i.e. the order dated 16.10.1981 (Annexure-P.2) would not confer any right on the petitioner. In Chandigarh Administration and another v. Jagjit Singh & another, (1995) 1 SCC 745, it was held by the Supreme Court as follows:-

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of this case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose."

Keeping in view the above observations, the petitioner cannot claim any parity with Shri Ram Chander Sharma.

For the foregoing reasons, the writ petition is devoid of any merit and is accordingly dismissed.

**(S.S. Saron)**
**Judge**

July 21, 2006. **(S.S. Nijjar)**
**Judge**

hsp